He refused to obey the order as being unreasonable and not within the scope of his duties. The present case seems to this court to be a *fortiori* since in this case the appellants were engaged as rubber tappers and were transferred from one rubber tapping task to another rubber tapping task. It is said however that because they were experienced tappers it was unreasonable to give an order requiring them to tap low yielding trees which required slaughter tapping at great heights above the ground, the more so since 28 of the 29 appellants were women and the order would result in a reduction of their earnings. There was no evidence that there was any term of their contracts of employment, express or implied, which specifies the type of tapping they were required to do or which exclude any particular type of tapping. Nor was there any evidence of any usage of the trade (if such it may be described) which recognized that experienced tappers would not be required to do certain types of tapping. In the absence of any evidence of one or other of these factors, I am of opinion that the work was suitable to the capacity of the appellants and that the order given appellants was neither unlawful, unreasonable nor unsuitable to their capacity.

For the reasons set out herein, I have come to the conclusion that the learned judge was right in upholding the decision of the labour commissioner and I would dismiss the appeal.

Gill J.: I have had the advantage of reading the judgments of the Chief Justice in Borneo and the Lord President and I agree that this appeal should be dismissed.

I also agree with the order proposed by the Lord President as regards costs.

Appeal dismissed.

Solicitors: *P. G. Lim; Skrine & Co.*

MOHAMED IKHAWAN v. JOHAR & ANOR.

[F.C. (Thomson L.P., Pike C.J. (Borneo) and Gill J.) December 1, 1965]

[K.L. — Federal Court Civil Appeal No. 53 of 1965]

Damages — Personal injuries — Eye — Loss of sight of left eye — Fracture of cheek bone and humerus — Assessment of damages.

The appellant a boy under 14 years sustained severe personal injuries as a result of an accident in which a Government lorry driven by the first respondent knocked down the bicycle on which the boy was riding. The boy sustained fractures of his left cheek bone and left humerus and was blinded in the left eye. He was still suffering from constant weeping as a result of blockage of the lachrymal duct and had a permanent facial deformity. The trial judge found that the driver of the Government lorry was negligent and awarded $12,500 general damages (*ante* p. 5). An appeal was lodged against the quantum of damages and the defendants cross-appealed against the whole of the decision. The cross-appeal in so far as it related to liability was dismissed. On the question of damages,

Held: (1) the damages awarded by the learned trial judge were too low and he had in particular overlooked the consideration of the increased vulnerability of a one-eyed man;

(2) the court would not have been justified in interfering with the award of $12,500 by the trial judge if the appellant had suffered no more than the loss of his eye but in view of the fact that he would continue suffering from watering of the eye and from his facial disfigurement and that he had an arm disablement for some two years the damages should be increased to $15,500.

Cases referred to:—

(1) *Mason* v. *Williams* [1955] 1 W.L.R. 549, 552.

(2) *Nolan* v. *Dental Manufacturing Co. Ltd.* [1958] 1 W.L.R. 936, 942.

(3) *Scott* v. *Masial* [1959] 2 Q.B. 429, 437.

(4) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1964] M.L.J. 463, 466.

(5) *Tucker* v. *Ang Oon Hue* [1959] M.L.J. 115.

(6) *Leong Chin Hong* v. *Chap Yoon Cheong & Anor., unreported* Singapore Civil Suit No. 1211 of 1956.

(7) *Ong Kian Teck* v. *Tung Poh Teck & Anor. unreported* Singapore Civil Suit No. 1166 of 1958.

(8) *Pahang Lim Siong Motor Co. Ltd.* v. *Cheong Swee Khui* [1962] M.L.J. 29.

(9) *Bloomfield* v. *British Transport Commission* [1960] 2 Q.B. 86.

(10) *Bastow* v. *Bagley & Co. Ltd.* [1961] 3 All. E.R. 1101.

FEDERAL COURT.

H. E. Cashin for the appellant.

Au Ah Wah (Treasury Solicitor) for the respondents.

Cur. Adv. Vult.

Thomson L.P.: This is an appeal in proceedings arising from a road accident which occurred on a bridge crossing the Sungei Tanjong Karang on 29th January, 1963, in broad daylight.

The appellant, who at the time was a boy of just under 14 years of age, was riding his bicycle along the bridge when a heavy Government lorry which was being driven over the bridge in the same direction came into contact with him or his bicycle causing him to fall whereby he sustained severe personal injuries.

In consequence of this occurrence the boy suing by his father as next friend, commenced the present action against the driver of the lorry and the Government as his employer.

It was the case for the boy that the lorry was being driven negligently and that it was in consequence of this that the accident occurred. The negligence was said to have consisted *inter alia* in failing to keep a proper look out, failing to observe the presence of the boy and failing to stop in time to avoid the collision.

The defence was a denial of negligence on the part of the driver and an averment of contributory negligence on the part of the boy. Though there has been no formal admission it has never been contested that if there was negligence on the part of the driver then the Government as his employer is vicariously liable for his negligence.

In the event the trial judge found that there was negligence on the part of the driver and that there was no contributory negligence on the part of the boy. He assessed the damages at $231 special damages and $12,500 general damages.

Against so much of that decision as relates to the amount of damages the boy has now appealed on the ground that the amount awarded by way of general damages is inadequate. The defendants have cross-appealed against the whole of the decision in so far as it relates to liability and against so much of it as relates to the amount of damages on the ground that the amount awarded for general damages is excessive.

It will be the logical course to deal in the first place with the cross-appeal in so far as it involves the issue of liability.

What may be described as the framework of the accident has never been in dispute. The bridge is a temporary one of the type known as a "Bailey" bridge which is a kind of bridge which is not very rigid, that is to say there is slight movement when a vehicle, particularly a heavy vehicle, is passing over it. The width of the roadway is 11 feet 3 inches. It is about 80 yards long and the collision occurred about the middle. The lorry was a heavy vehicle with a high-sided body of the type used for carrying road metal and its width was 7 feet 7 inches. This meant that the maximum possible clearance between the nearside of the lorry and the side of the bridge would be only 3 feet and 8 inches and there would only be even that in the not very likely event of the lorry being driven with its offside wheels only just clearing the other side of the bridge. At the time of the accident one way traffic was in operation controlled by a signalman with red and green flags.

The boy's story was that he was riding across the bridge and when he was about the middle he heard the noise of a vehicle following him. He kept well in to his left side but he was struck by the front of the nearside portion of the body of the lorry and fell to the ground and was injured. He had nothing but an empty sack on the carrier of his bicycle.

The driver said he had been driving Government vehicles for twenty years and had never had an accident. On the day in question he stopped at the bridge till he received the signal to proceed. When he received the signal he proceeded slowly in bottom gear. About half way across he felt a bump against the back of the lorry. He continued slowly to the other end of the bridge and then stopped and told the signalman that he thought a piece of the bridge timber had broken and struck the lorry, a thing that had occurred before. He and the signalman looked and saw the boy and a bicycle lying on the roadway of the bridge. That was the first time he had seen the boy.

The driver's evidence was supported by that of the signalman. In particular he said that before the driver stopped and spoke to him he had not noticed any cyclist on the bridge. He also said, however, that he did not see a motor cycle ridden by a Chinese. This clearly had a bearing on the evidence of the only other witness, a man Tan. This witness said that on the day in question he was riding a motor cycle immediately behind the defendant's lorry which he followed on to the bridge. He also saw the boy on his bicycle. The boy was in motion but kept putting his left foot down on the timber skirting of the bridge. He then fell against the side of the lorry and fell to the ground. Although he did not say so in terms the witness seemed to intend to convey that at the time the boy was overtaking the lorry. The witness sounded his horn and shouted to the signalman to stop the lorry for having knocked a person down. He then went to the nearby police station to report the matter and while he was there the defendant drove up.

On all this the trial judge came to the conclusions that at the time of the collision the defendant was attempting to overtake the plaintiff and that with the vehicle in question on the bridge in question this was an extremely reckless operation. He placed no reliance on the witness Tan and did not accept his evidence.

With respect, I agree with these conclusions. The boy said that the lorry overtook him and the judge believed him. That he was on his nearside of the roadway when he was struck seems clear from the position of the bicycle after the collision as shown by the police photographs. If, then, he was attempting to overtake the lorry he must have been doing so on the lorry's nearside; but, unless the lorry was being driven almost touching the bridge rails on its offside, then by reason of the dimensions which have been mentioned to pass it on its nearside would have been so clearly impossible an operation that not even the most foolhardy schoolboy cyclist would have thought of attempting it. And on a bridge like a bailey bridge the only reason why an experienced driver should drive so far to his offside would be to avoid something on his nearside.

For these reasons, then, I would dismiss so much of the cross-appeal as concerns liability.

That brings me to the question of the amount of the damages. The facts here are not in any real dispute.

The plaintiff is the son of a small farmer and works on his father's farm. He impressed the trial judge as not being very intelligent. At the time of the accident he was still at school and had only attained Standard V. Shortly after the accident he left school. His injuries were serious. He had a depressed fracture of the left cheek bone and a fracture of the left humerus, and he was in hospital for about three weeks. As a result of the fractured cheek bone he was permanently blinded in the left eye and at the time of the trial, more than two years after the accident, he was still suffering from constant weeping as a result of blockage of the lachrymal duct. He also had a permanent facial deformity. The fractured humerus had clearly caused disability for some time but at the time of the trial according to a surgeon who had treated him he had "practically" recovered from it.

On all this the trial judge, in addition to a small sum for special damages which has not been attacked, awarded $12,500 general damages. He took the view that there was no question of loss of earning capacity. The boy, in his view, was not very intelligent and even had there been no accident was probably destined to make his living as a peasant farmer. In this he would be in no way handicapped by only having the sight of one eye. He had, however, lost the sight of an eye and that was something precious to any man. Moreover he had suffered a great deal of discomfort and would have to go on in life with the embarrassment of a certain amount of cosmetic deformity. Taking all that into account and doing his best to be fair to both parties he assessed the damages at $12,500.

The only factor which would seem to have been overlooked is what may be called the increased vulnerability of a one-eyed man. This was thus put by Finnemore J. in the case of *Mason* v. *Williams*:—[1]

> "broadly and substantially a man who has lost an eye becomes as good as a man with two eyes within a reasonable time, for all effective and normal purposes. On the other hand he has to carry with him no slight risk that if an accident does happen again it may destroy his remaining eye, and then he would become completely blind. That is a matter to which the court has to pay attention as well."

In the later case of *Nolan* v. *Dental Manufacturing Co. Ltd.*[2] it was said (*per* Paull J.) that the relevance of this factor was "no longer in dispute".

For myself, with great respect, I think the amount awarded by the trial judge was too low and I understand that my brethren are of the same opinion. As far as the loss of sight goes there was not only the loss itself and the consequent increased vulnerability in the event of another accident but there was the aggravation of constant weeping of the blind eye. And apart from the loss of sight and the pain and suffering resulting from the injuries in general there are the considerations that for at least two years, from the time of the accident till the time of the trial, he suffered some disability by reason of his broken arm and that he will have to go through life suffering from some degree of facial disfigurement.

But holding the view that the amount awarded is too low are we as a Court of Appeal bound, or indeed entitled, to interfere with the decision of the trial judge? As was said by Morris L.J. in the case of *Scott* v. *Musial*:—[3]

> "If three judges of the Court of Appeal consider that the amount of general damages that they would have awarded would have been a figure different from that decided by the trial judge, they will not, for that reason alone, give preference to their own figure; they will only do so if satisfied that the judge has acted on a wrong principle of law or has misapprehended the facts, or has, for these or other reasons, made a wholly erroneous estimate of the damage suffered."

In exegesis of this passage, however, regard must be had to the decision of the Privy Council in the local case of *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.*[4] that an award may be "so much out of line with a discernible trend or pattern of awards in reasonably comparable cases that it must be regarded as having been a wholly erroneous estimate". Earlier in the same judgment their Lordships had said this:—

> "If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardised or that there should be any attempt at rigid classification. It is but to recognise that since in a Court of Law compensation for physical injury can only be assessed and fixed in monetary terms the best that courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion. As far as possible it is desirable that two litigants whose claims correspond should receive similar treatment just as it is desirable that they should both receive fair treatment. Those whom they sue are no less entitled."

In the present case we are faced with the difficulty that in the local courts there is a lack of comparable cases. The reason, of course, is that in a predominantly agricultural society eye injuries are not of very frequent occurrence, at least not in circumstances that come before the courts.

Counsel have not been able to refer us to a single case in Malaya which is in point and none of us know of any.

In Singapore there have been three cases and it is doubtful if they can be regarded as showing any very distinct trend.

In the case of *Tucker* v. *Ang Oon Hue* [5] the plaintiff was a boy five years of age. He lost

the sight of his right eye and there was considerable pain and suffering; there was, however, no other permanent disability. There was no question of loss of earning capacity but the judge observed that the plaintiff would not be accepted into any of the armed services, an observation which was probably connected with the fact that his father was an officer in the air force. The general damages awarded were $17,000.

In the case of *Leong Chin Hung* v. *Chop Yuen Cheong Sand & anor.*[6] the plaintiff was a schoolboy sixteen years of age who lost his right eye. As a result of his injuries he also suffered from slight deafness. There would appear to have been no question of any loss of earning capacity. The total amount awarded was $20,380 but this probably included something for special damages in respect of which $842 had been claimed.

In the case of *Ong Kian Teck* v. *Tng Poh Teck & anor.*[7] the plaintiff was also an infant who lost the sight of an eye. No other particulars are available. In the event he was awarded $16,500 damages, but it is not clear how much of this was in respect of special damages.

In England the general level of damages would seem to be rather lower than it has hitherto been in Singapore. In this connection, however, it is to be observed that the Singapore decisions which have been mentioned were all by single judges and were all prior in date to the decision of this court in *Pahang Lin Siong Motor Co. Ltd.* v. *Cheong Swee Khai*[8] where we expressed the view that on the whole damages for personal injury should be lower here than in England on the ground of the greater utility in local conditions of small sums of capital.

In the case of *Bloomfield* v. *British Transport Commission*[9] a railway worker claimed damages for the loss of his right eye and was awarded £1,500. It was contended on his behalf that the conventional figure established in recent years from which a court should start in assessing damages for the loss of an eye was about £2,000. The Court of Appeal in dismissing the appeal rejected the submission that an appeal could be based on any such conventional figure.

The following year the question arose again in the case of *Bastow* v. *Bagley & Co. Ltd.*[10] In that case the appellant had lost the sight of his right eye. There was no question of loss of earning power and no risk of future pain or discomfort. He had been awarded £1,150 general damages and appealed against that award. The Court of Appeal held that the award, though less than that which they themselves would have made, was not so low as to justify their interference of that award. But before final judgment dismissing the appeal was entered another division of the Court of Appeal increased from £850 to £2,000 an award for loss of an eye in broadly similar circumstances. It was held that the disparity between the two awards was too great to be just and accordingly they increased the award in the case before them to £1,800. Diplock L.J. said this (at p. 1103) :—

> "In awarding damages for any physical injury, the court is attempting to equate incommensurables. No purely logical process can lead to the conclusion that, for the loss of the sight of one eye, the right sum of compensation which will be just as between the victim and the tortfeasor is in the region of £2,000 rather than in the region of £1,000 or of £10,000. The choice of the right order of figure is empirical and, in practice, results from a general consensus of opinion of damage — awarding tribunals — juries, judges and appellate courts. What can be said, however, if justice is to be done as between one victim and another and one tortfeasor and another, is that, when all proper allowance has been made for what may be widely differing circumstances of the individual victims, the sum awarded to one should not be out of all proportion tc the sum awarded to another in respect of similar physical injuries."

The only other English case (out of many) which may perhaps be mentioned is that of *Mason* v. *Williams, supra,* where Finnemore J. would appear to have treated the fact that the plaintiff had been "somewhat troubled with watering" since he had had an artificial eye inserted as something to be taken into account in assessing damages which he fixed at £1,900.

Returning to the case before us, I have come to the conclusion that, bearing in mind the case of *Pahang Lin Siong Motor Co. Ltd.* v. *Cheong Swee Khai, supra,* if the appellant had suffered no more than the loss of his eye we would not be justified in interfering with the award of $12,500 by the trial judge, but that in view of the fact that he will go on suffering from watering of the eye and from his facial disfigurement and that he had an arm disablement for some two years he should have something more. It would be wrong and would serve no useful purpose to attempt any very exact estimation of these individual factors for everything is so closely connected with everything else as to defy analysis but I would award $15,500 as suitable compensation for the whole of his loss.

I would accordingly allow the appeal to that extent and dismiss the cross-appeal. The appellant should have the costs of the appeal and the cross-appeal. There will be an order for taxation of the appellant's solicitor-client costs here and in the High Court and for payment to appellant's solicitors out of the moneys in court the difference between such costs and the costs as taxed between party and party.

Pike C.J. (Borneo) and **Gill J.** concurred.

Appeal allowed.

Solicitors: *Murphy & Dunbar.*